

# Export Insurance Act

Promulgated, SG No. 61/29.05.1998, amended and supplemented, SG No. 112/29.12.2001, SG No. 92/15.10.2004, amended, SG No. 103/23.12.2005, effective 1.01.2006, amended and supplemented, SG No. 41/22.05.2007, amended, SG No. 36/4.04.2008, SG No. 82/16.10.2009, effective 16.10.2009, SG No. 82/26.10.2012, SG No. 15/15.02.2013, effective 1.01.2014, SG No. 14/20.02.2015, SG No. 58/18.07.2017, effective 18.07.2017, amended and supplemented, SG No. 100/4.12.2018, effective 4.12.2018

Text in Bulgarian: Закон за експортното застраховане

## Chapter One GENERAL PROVISIONS

**Article 1.** (1) (Amended, SG No. 112/2001, SG No. 92/2004) This act shall regulate the terms and procedures for insurance and re-insurance at the expense of the state of export risks specified in article 3, paragraph 1 related to the production and export of Bulgarian goods and services or to realizing Bulgarian investments abroad.

(2) (New, SG No. 112/2001, amended, SG No. 92/2004) The insurance under paragraph 1 shall ensure traders in the cases of property damages incurred by them that have occurred due to commercial or political risk.

(3) (Renumbered from Paragraph (2), supplemented, SG No. 112/2001) The insurance under paragraph 1 has the purpose of:

1. carrying out the national strategy in the field of the foreign trade exchange and realizing of Bulgarian investments abroad;
2. development of the export potential of the country and improvement of the competitiveness of the export of Bulgarian goods and services on the international markets.

**Article 2.** (Amended, SG No. 112/2001) (1) (Amended, SG No. 41/2007) The activity under this act shall be implemented by the joint-stock company "Bulgarian Export Insurance Agency", referred to hereinafter as BEIA EEAD. The insurance and the re-insurance contracts shall be concluded on behalf of BEIA EEAD.

(2) (Repealed, SG No. 41/2007).

(3) (New, SG No. 100/2018, effective 4.12.2018) The rights of the state in the general assembly of shareholders of BEIA EAD shall be exercised by the Minister of Economy.

(4) (New, SG No. 100/2018, effective 4.12.2018) BEIA EAD shall have a two-tier system of governance.

(5) (New, SG No. 100/2018, effective 4.12.2018) BEIA EAD shall ensure the implementation of the state policy of insurance and re-insurance under this act against export risks, related to the production and export of Bulgarian goods and services or to realizing Bulgarian investments abroad.

(6) (New, SG No. 100/2018, effective 4.12.2018) Based on proposal from the Minister of Economy the Council of Ministers shall approve a three-year strategy for the activity of BEIA EAD, in accordance with the national economic policy.

(7) (New, SG No. 100/2018, effective 4.12.2018) The strategy under Paragraph 6 shall be submitted by BEIA EAD for approval by the Minister of Economy.

**Article 3.** (Amended, SG No. 112/2001, SG No. 92/2004) (1) (Supplemented, SG No. 100/2018, effective 4.12.2018) The activity at the expense of the state under this act shall include insurance and reinsurance of non-market risk, including the following export risks related to:

1. production of Bulgarian goods and services for export;
2. financing the export of Bulgarian goods and services
3. Bulgarian investments abroad against political risk;
4. bank credits intended for realising Bulgarian investments abroad;
5. (supplemented, SG No. 100/2018, effective 4.12.2018) bank guarantees or other direct or indirect guarantees, related to exporting Bulgarian goods and performing services or related to projects with

international financing;

6. pre-export financing;

7. reinsurance of insurance contracts for the risks under item 1 - 6 and paragraph 2 concluded by foreign export insurance institutions under reciprocal terms.

(2) (Amended, SG No. 100/2018, effective 4.12.2018) The activity at the expense of the state under this act shall include also insurance against market risk of export credits related to the production and export of Bulgarian goods and services or to the realisation of Bulgarian investments abroad which cannot be insured or reinsured freely on the insurance market in cases of substantial interest for the national economy on the basis of a decision by the Supervisory Board of BEIA EAD.

(3) (Amended, SG No. 41/2007) In connection with the implementation of the activity under paragraph 1 BEIA EEAD can perform activity for providing services to foreign export insurance institutions under the conditions of reciprocity.

(4) (New, SG No. 41/2007) The activity at the expense of the state under this act shall furthermore cover insurance of bank and non-bank loans granted to small and medium-sized enterprises.

**Article 3a.** (New, SG No. 41/2007) (1) When insurance cover is provided by BEIA EEAD, jointly with an organisation or government institution of a Member State of the European Union, on a transaction involving one or more subcontractors in one or several Member States of the European Union the provisions of the Specimen Agreement Regulating the Reciprocal Obligations of Export Insurers set out in Annex No. 1 shall apply.

(2) The agreement under paragraph 1 shall regulate the reciprocal obligations of export insurers from Member States of the European Union in cases where the following conditions obtain:

1. an undertaking hereinafter called 'the principal contractor' subcontracts to one or more undertakings hereinafter called 'the subcontractors' of one or more Member States of the European Union an export contract to which the principal contractor is a party, and which it has concluded with an undertaking hereinafter called 'the buyer' situated in:

- a) a country not belonging to the European Union, or
  - b) a Member State of the European Union other than those in which the principal contractor and the subcontractor(s) are situated;
2. the principal contractor has undertaken to remit to the subcontractor(s) the portion due to the latter out of the sums paid by the buyer to the principal contractor, and to complete any formalities which may be necessary to transfer that portion of the payments made by the buyer which is due to the subcontractor(s);
3. there are no legal ties between the subcontractor(s) and the buyer;
4. the principal contractor's export insurer hereinafter called 'the principal insurer' and the export insurer(s) of the subcontractor(s) hereinafter called 'the joint insurer(s)' are prepared to guarantee, each according to the usual terms of his policy, the portion of the operation carried out in their respective countries against the risks defined by them in each individual agreement.
- (3) The parties to the agreement may negotiate additional conditions in so far as they do not prejudice the provisions of the Specimen Agreement under Annex No. 1.

**Article 3b.** (New, SG No. 41/2007) (1) When providing insurance cover directly or indirectly for the account of, or with the support of one or more Member States, for transactions related to the export of goods and/or services originating in a Member State which involve a total risk period of two years or more, that is to say, the repayment period including the manufacturing period is taken into account, the provisions of the Common Principles for Export Credit Insurance under Annex No. 2 shall apply.

(2) The Common Principles under paragraph 1 shall not apply to cover for bid, advance payment, performance and retention bonds, neither do they apply to cover for risks relating to construction equipment and material when locally used for the performance of a commercial contract.

(3) BEIA EEAD shall provide cover in accordance with the Common Principles under Annex No. 2 for transactions related to the export of goods and/or services destined for countries outside the European Union and financed by buyer credit or supplier credit or paid on cash terms.

**Article 4.** (Amended, SG No. 112/2001, SG No. 92/2004) Non-market risk under this act shall be:

1. short-term commercial and political risk, except for the risk defined in Article 5 as market risk;
2. medium term commercial and political risk, except for the risk defined in Article 5 as market risk;
3. long term commercial and political risk.

(Chapter Two - Title repealed, SG No. 112/2001)

**Article 5.** (Amended, SG No. 112/2001) (1) (Amended, SG No. 92/2004) Market risk under this act shall be any commercial or political risk for a period of up to two years where a debtor under an export contract is a subject of private or public law, is a legal person or a natural person from a state, specified as a market risk state.

(2) A list of the market risk states under paragraph 1 shall be adopted and promulgated in the State Gazette by the Council of Ministers.

**Article 6.** (1) (Amended, SG No. 112/2001, SG No. 92/2004, previous text of Article 6, SG No. 41/2007) Political risk under this act shall be:

1. Occurrence of extraordinary circumstances in the state of the debtor or in a third country, connected with the payments, impeding the settlement of liabilities, related to the production and the export of Bulgarian goods and services or to the realization of Bulgarian investments abroad, including:

- a) Occurrence of political events such as war, coup d'etat, civil unrest, riots, strikes, embargo, as well as natural disasters or other events of comparable effect;
- b) Declaring of a general moratorium on payments;
- c) Changes in the currency payments regime;
- d) Adoption or amendment of statutory instruments or decisions of the government or of another state body;
- e) Confiscation or nationalisation;

2. (amended, SG No. 100/2018, effective 4.12.2018) refusal of payment or deferral of the due payment, when the debtor is a foreign state, a state body or a state organisation of a foreign state, to which a procedure of declaring bankruptcy cannot be applied;

3. Restrictions or a ban on the export of goods or services when implementing obligations under international agreements to which the Republic of Bulgaria is a party, preventing the implementation of export contracts concluded before their introduction.

(2) (New, SG No. 41/2007) Unless provided otherwise in items 15 - 22 of the Common Principles under Annex No. 2, paragraph 1 shall apply to cases of medium or long-term risk for cover of export credits.

**Article 7.** (Amended, SG No. 112/2001) (1) Commercial risk under this act shall be:

1. Insolvency or declaration bankruptcy of the debtor under the contract;

2. (Amended, SG No. 100/2018, effective 4.12.2018) Delay of due payment after the payment date specified in the contract due to reasons, not related to the implementation of the contract;

3. Unilateral termination of the contract by the debtor without due legal grounds;

4. Refusal of the debtor to accept the goods or the services - subject of the contract without due legal grounds.

(2) In the cases under paragraph 1 there shall be no commercial risk when the debtor under the contract is a foreign state, a state body or a state organisation of a foreign state.

(3) (New, SG No. 41/2007, amended, SG No. 100/2018, effective 4.12.2018) In cases of medium or long-term risk paragraphs 1 and 2 shall apply unless provided otherwise in items 14 – 16 of the Common Principles under Annex No. 2.

**Article 8.** (Amended, SG No. 112/2001, SG No. 92/2004, SG No. 41/2007) For insurance under Article 3, paragraph 1 the amount of the insurance qindemni fication shall not be more than 90 percent of the insurance sum.

**Article 9.** (1) (Amended, SG No. 112/2001, SG No. 92/2004) The Republic of Bulgaria state budget Act for the respective year shall provide of the resources of the central budget for paying insurance indemnities under Article 3.

(2) (Amended, SG No. 112/2001, SG No. 100/2018, effective 4.12.2018) The resources under paragraph 1 shall be provided in case of a shortage of the resources in the account under Article 14, paragraph 2 on the basis of an act of the Council of Ministers by proposal of the Minister of Economy.

(3) (Repealed, SG No. 112/2001, new, SG No. 92/2004, amended, SG No. 82/2009, effective 16.10.2009, SG No. 14/2015, repealed, SG No. 100/2018, effective 4.12.2018).

**Article 10.** (Amended, SG No. 112/2001, SG No. 92/2004) (1) BEIA EAD may conclude insurance and reinsurance contracts under article 3 up to the size of its insurance capacity

(2) The insurance capacity shall be the sum of:

1. the total amount of the insured credit limits under insurance contracts concluded by BEIA EAD under this act;
2. the total amount of the credit limits under this act approved and proposed by BEIA EAD of the potential insured exporters or investors;
3. the total amount of the credit limits on which BEIA EAD is re-insurer pursuant to article 3, paragraph 1, item 7;
4. the total amount of the expected revenues from the projected development of the business of BEIA EAD.

(3) The sum under paragraph 2 shall be reduced by the sum of the reinsured credit limits under the reinsurance contracts concluded by BEIA EAD.

(4) (Amended, SG No. 15/2013, effective 1.01.2014, SG No. 100/2018, effective 4.12.2018) The insurance capacity may not exceed the sum of the envisaged amount of funds from the state budget for paying compensations under insurance contracts under article 3 for the respective year, multiplied by a ration approved by the Council of Ministers.

(5) (Amended, SG No. 15/2013, effective 1.01.2014, repealed, SG No. 100/2018, effective 4.12.2018).

(6) The methodology and the procedure for determining the ration under paragraph 4 shall be specified in a regulation of the Council of Ministers.

**Article 10a.** (New, SG No. 112/2001, amended, SG No. 103/2005) (1) BEIA - EAD shall be an insurer within the meaning of the Insurance Code. The Insurance Code shall apply to BEIA - EAD, insofar as the present law does not provide otherwise.

(2) The Insurance Code shall not apply to the operations of BEIA - EAD under the present law, with the exception of the provision of Part Four, which shall apply to insurance legal relations that have arisen under the present law.

**Article 10b.** (New, SG No. 41/2007) BEIA EAD shall prepare and send the required notifications as per Chapter IV of the Common Principles under Annex No. 2.

## **Chapter Two**

**(Previous Chapter Three, SG No. 112/2001)**

### **SUPERVISORY BOARD OF BEIA EAD**

**(Title amended, SG No. 100/2018, effective 4.12.2018)**

**Article 11.** (Amended, SG No. 112/2001, amended and supplemented, SG No. 92/2004, amended, SG No. 36/2008, SG No. 82/2009, effective 16.10.2009, SG No. 82/2012, SG No. 14/2015, SG No. 58/2017, effective 18.07.2017, repealed, SG No. 100/2018, effective 4.12.2018).

**Article 12.** (Repealed, SG No. 112/2001).

**Article 13.** (1) (Amended, SG No. 112/2001, SG No. 92/2004, SG No. 100/2018, effective 4.12.2018) The Supervisory Board shall:

1. (amended, SG No. 100/2018, effective 4.12.2018) draw up a three-year strategy for the activity of BEIA EAD, in accordance with the national economic policy and submit it to the Minister of Economy;



2. (amended, SG No. 82/2009, effective 16.10.2009, SG No. 14/2015, SG No. 100/2018, effective 4.12.2018) propose to the Minister of Economy through the Minister of the Economy the amount of the funds under article 9, paragraph 1 for inclusion in the draft state budget bill for the respective year;

3. (amended, SG No. 100/2018, effective 4.12.2018) adopt annually a classification of the states by level of risk and determine the maximum amounts of exposure per each state;

4. (repealed, SG No. 100/2018, effective 4.12.2018);

5. (amended, SG No. 82/2009, effective 16.10.2009, SG No. 14/2015) draft an annual report every year on the activity under article 3 and submit it to the Council of Ministers through the Minister of the Economy by 31 May of the following calendar year;

6. (amended, SG No. 100/2018, effective 4.12.2018) approve annually a methodology of allocation of the costs in connection with the activity under Article 3;

7. (amended, SG No. 100/2018, effective 4.12.2018) approve annually an investment programme of BEIA EAD;

8. (amended, SG No. 100/2018, effective 4.12.2018) request on quarterly basis from the Management Board of BEIA EAD information concerning insurance contracts entered into, territorial and sectoral analyses of the distribution of insured exports and investments, amounts of the credit limits requested for insurance, compared to the insurance capacity of BEIA EAD, the insurance compensations paid and any insurance compensations claimed but not paid pursuant to insurance contracts, entered into under this Act;

9. (repealed, SG No. 100/2018, effective 4.12.2018);

10. adopt other decisions related to the operation of BEIA EAD hereunder.

(2) (Amended, SG No. 112/2001, repealed, SG No. 100/2018, effective 4.12.2018).

(3) (New, SG No. 112/2001, amended, SG No. 100/2018, effective 4.12.2018) The Minister of Economy shall propose to the Council of Ministers the adoption of a decision on transferring the insurance and re-insurance contracts concluded by BEIA EAD under this act in case of opening a liquidation or bankruptcy procedure of BEIA EAD.

## **Chapter Three**

**(Previous Chapter Four, SG No. 112/2001)**

### **FINANCIAL PROVISIONS FOR APPLYING THIS ACT**

**(Title amended, SG No. 92/2004)**

**Article 13a.** (New, SG No. 92/2004) (1) The state shall guarantee the payment of insurance, compensations for the activity under paragraph 3. Insurance compensations for the current year shall be paid up to the amount of the funds provided for in the state budget under the procedure of article 9.

(2) (Amended, SG No. 100/2018, effective 4.12.2018) The mechanism for requesting the funds under article 9 and for paying insurance benefits using funds under article 9, paragraph 1 shall be specified in the regulation under article 10, paragraph 6.

**Article 14.** (1) (Amended, SG No. 112/2001) For the activity herein BEIA EAD shall keep a separate analytical accounting.

(2) (New, SG No. 112/2001) A separate bank account of BEIA EAD shall be opened and kept for implementing the financial operations related to the activity herein.

(3) (New, SG No. 112/2001, amended, SG No. 100/2018, effective 4.12.2018) The disposal of funds from the account under Paragraph 2 shall take place under terms and procedures, established by the Supervisory Board.

(4) (New, SG No. 100/2018, effective 4.12.2018) The insurance benefits under Article 3, Paragraphs 1 and 2 shall be paid by BEIA EAD.

(5) (Renumbered from Paragraph (2), amended, SG No. 112/2001, SG No. 92/2004, renumbered from Paragraph (4), SG No. 100/2018, effective 4.12.2018) The funds in the account under paragraph 2 shall be collected from:

1. insurance premiums under insurance contracts concluded by BEIA EAD under this act;

2. transfer of funds allocated by the Republic of Bulgaria State Budget Act for the respective year for the operation of BEIA EAD under article

3;

3. donations and grants;

4. other incomes.

(6) (Repealed, renumbered from Paragraph (3), amended, SG No. 112/2001, SG No. 92/2004, renumbered from Paragraph (5), SG No. 100/2018, effective 4.12.2018) The funds in the account shall be spent for:

1. paying insurance compensations under insurance contracts concluded by BEIA EAD under this act;

2. paying redeemed premiums on reinsurance of the operation of BEIA EAD buy a different insurer;

3. paying commissions to foreign insurers on his reinsurance by BEIA EAD;

4. (amended, SG No. 100/2018, effective 4.12.2018) The administrative expenses for the operation of BEIA EAD hereunder up to an amount, determined by the Supervisory Board;

5. (repealed, SG No. 82/2012);

6. other incidental expenses related to the operation of BEIA EAD hereunder.

(7) (Renumbered from Paragraph (4), amended, SG No. 112/2001, SG No. 92/2004, renumbered from Paragraph (6), SG No. 100/2018, effective 4.12.2018) The annual profit from the operations under Article 1, paragraph 1 shall not be distributed but shall be set aside in a special reserve which shall be used for covering losses from the operations under this act.

(8) (New, SG No. 112/2001, renumbered from Paragraph (7), SG No. 100/2018, effective 4.12.2018) The control over the financial operations related to the activity under Article 3 shall be implemented by the Audit Chamber.

**Article 15.** (Amended, SG No. 112/2001) (1) The resources in the account under Article 14, paragraph 2 cannot be used for redemption of liabilities to creditors under insurance contracts concluded by BEIA EAD, at its own expense neither for administrative and other expenses of BEIA EAD for activities other than the ones specified in Article 3.

(2) In case of declaring BEIA EAD bankrupt the resources in the account under Article 14, paragraph 2 shall not be included in the insolvency mass.

**Article 16.** (Amended, SG No. 112/2001, SG No. 100/2018, effective 4.12.2018) BEIA EAD shall supply information on a regular basis to the Minister of Economy about the operations implemented with the account under article 14, paragraph 2.

**Article 17.** (New, SG No. 112/2001, amended, SG No. 100/2018, effective 4.12.2018) The incomes from the activity under article 3 and the incomes under article 14, paragraph 5, items 3 and 4 shall be exempt from state and local taxes and fees.

## **ADDITIONAL PROVISIONS**

### **(Title amended, SG No. 41/2007)**

**§ 1.** (Previous § 1, SG No. 112/2001, previous Single paragraph, SG No. 41/2007) In the meaning herein:

1. "Bulgarian goods" shall be goods whose Bulgarian origin is certified by a document issued by the competent authorities of the Republic of Bulgaria.

2. (Amended, SG No. 112/2001) "Bulgarian services" shall be services provided to a foreign natural or legal person by a trader registered under the Commerce Act.

3. (New, SG No. 112/2001) "Bulgarian investments" shall be investments made abroad by a trader registered under the Commerce Act.

4. (Renumbered from item 3, amended, SG No. 112/2001, SG No. 41/2007) "Short-term risk" shall be the risk for a period up to two years.

5. (Renumbered from item 4, amended, SG No. 112/2001, SG No. 41/2007) "Medium-term risk" shall be the risk for a period from two to five years.

6. (Renumbered from item 5, amended, SG No. 112/2001) "Long-term

risk" shall be the risk for a period over five years.

7. (New, SG No. 92/2004) "Production risk losses" shall exist when the implementation of contractual obligations or the production of the goods ordered has been discontinued for a period of six successive months when this termination has been caused directly and exclusively by one or more of the events specified as commercial risk for private law debtors as well as by political risk.

8. (New, SG No. 92/2004) "Credit limit" shall be the maximum amount of cover of the insurer for the export of the insured to a specific debtor at any time of the validity of the insurance contract.

9. (New, SG No. 92/2004, repealed, SG No. 100/2018, effective 4.12.2018).

10. (New, SG No. 92/2004, repealed, SG No. 100/2018, effective 4.12.2018).

11. (New, SG No. 41/2007) "Total outstanding exposure" shall include insurance payments which have not matured, overdue payments which have not been indemnified and presented claims which have not been recovered or denied.

**§ 2.** (Repealed, SG No. 112/2001, new, SG No. 41/2007) Anywhere in this act the abbreviation AD shall be replaced by EAD.

Transitional and Final Provisions  
(Title repealed, SG No. 112/2001)

**§ 3.** (Repealed, SG No. 112/2001).

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TRANSITIONAL AND FINAL PROVISIONS  
to the Act on Amending and Supplementing the Export Insurance Act  
(SG No. 112/2001)

§ 25. The Council of Ministers shall approve and promulgate in the

State Gazette the list of states with market risk under Article 5, paragraph 2 within one month after this act enters into force.

§ 26. The Council of Ministers shall approve the corresponding amendments to the regulation on the operation of the Interdepartmental Export Insurance Council within three months after this act enters into force.

ACT on Amending and Supplementing the Export Insurance Act  
(SG No. 41/2007)

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Additional provision

§ 11. This Act shall introduce the provisions of Council Directive 98/29/EC on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover and Council Directive 84/568/EEC concerning the reciprocal obligations of export credit insurance organizations of the Member States acting on behalf of the State or with its support, or of public departments acting in place of such organizations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities.

Final provision

§ 12. BEIA EAD shall bring its General Terms for insurance of medium and long-term credits in line with the provisions of this act within one month from entry into force thereof.

CONCLUDING PROVISIONS

to the Act to amend the Administration Act  
(SG No. 82/2012)

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§ 16. Ministers and Ministers bring adopted respectively of their own

regulations in accordance with this Act within one month of its entry into force.

TRANSITIONAL AND CONCLUDING PROVISIONS  
to the Act to Amend the Act on the Prohibition of Chemical Weapons  
and on Control of Toxic Chemicals and the Precursors Thereof  
(SG No. 14/2015)

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§ 26. Everywhere in the Export Insurance Act (promulgated in the State Gazette, No. 61/1998; amended No. 112/2001, No. 92/2004, No. 103/2005, No. 41/2007, No. 36/2008, No. 82/2009, No. 82/2012 and No. 15/2013), the words "the Ministry of Economy, Energy and Tourism" and "Minister of Economy, Energy and Tourism" shall be replaced respectively with "the Ministry of Economy" and "Minister of Economy".  
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TRANSITIONAL AND FINAL PROVISIONS  
to the Act on Amending and Supplementing the Export Insurance Act  
(SG No. 100/2018, effective 4.12.2018)

§ 15. The Interdepartmental Council shall perform its functions, prescribed by the law, pending the entry into the Commercial Register of the change in the system of governance of BEIA EAD from a one-tier to a two-tier system.

§ 16. The statutory instruments of secondary legislation shall be brought into conformity with the provisions of this Act within six months from the entry into force of the said Act.  
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**Annex No. 1**

to Article 3a, paragraph 1

(New, SG No. 41/2007)

## INSURERS

### 1. Obligations of the principal insurer

The principal insurer, being the sole manager of the risk, including the subcontracted element, shall undertake:

- a) to guarantee the principal contractor, in respect only of the latter's part of the contract, against the risks defined by him in each individual agreement;
- b) not to accept any modification to any of the terms of performance of the contract (amount, delivery, payment, etc.) or to the contract between the principal contractor and the subcontractor(s) for the performance of that contract, unless mutually agreed with the joint insurer(s);
- c) not to disclaim liability under the provisions of the policy issued to the principal contractor in consequence of any default on the latter's part, without notifying the joint insurer thereof;
- d) not to declare that the policy has lapsed without notifying the joint insurer(s) thereof;
- e) to notify to the joint insurer(s) any fact which comes to his knowledge and which might alter the nature or extent of the risk or lead to a loss;
- f) in the event of loss or threat of loss, to consult the joint insurer(s) on the steps to be taken; decisions to acknowledge a loss shall, so far as possible, be taken by mutual agreement, the amount of the indemnity and the method of payment being fixed in accordance with the provisions of each policy;
- g) in the event of a loss, to take the necessary steps or require the principal contractor to take the necessary steps to recover amounts unpaid and to pay back to the joint insurer the portion owed to the latter out of the sums recovered and to complete any necessary formalities for transferring such portion; the costs incurred in recovery by the principal insurer shall be divided between the insurers in proportion to the share of the contract covered;
- h) in the event of cancellation of the guarantee given to the principal contractor, to use his best endeavours to meet the obligations set out in this item.

### 2. Obligations of the joint insurers

Each of the joint insurers shall undertake:



a) to guarantee the subcontractor in his country, in respect only of the latter's part of the operation, against the risks defined by him in each individual agreement;

b) not to accept any modification to the contract concluded between the principal contractor and the subcontractor for the performance of the contract concluded with the buyer, except by mutual agreement with the principal insurer;

c) not to disclaim liability under the provisions of the policy issued to the subcontractor in consequence of any default on the latter's part, without notifying the principal insurer thereof;

d) not to declare that the policy has lapsed without notifying the principal insurer thereof;

e) to notify the principal insurer of any fact which comes to his knowledge and which might alter the nature or extent of the risk or lead to a loss;

f) in the event of cancellation of the guarantee given to the subcontractor, to use his best endeavours to comply with the obligations set out in this item.

### 3. Consolidation

In the event of agreement to consolidate the debt of the buyer country, the principal insurer and the joint insurer(s) shall hold consultations on ways and means of resolving the specific problems raised by the consolidation agreement.

### 4. Buyer credit operations

Those Community export insurers who agree that their buyer credit systems are sufficiently compatible may further agree to establish or to cover a single buyer credit for the whole of a contract, whereupon the provisions of this Agreement shall apply by analogy.

### 5. Arbitration

Any dispute arising out of this Agreement which cannot be settled amicably shall be brought before an arbitration board composed of three arbitrators. Each of the parties involved shall appoint one arbitrator. The third arbitrator shall be appointed by the President of the Court of Justice of the European Communities; he shall act as chairman of the Arbitration Board. The proceedings shall be governed by the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

## **Annex No. 2**

to Article 3b, paragraph 1

(New, SG No. 41/2007)

### **COMMON PRINCIPLES FOR EXPORT CREDIT INSURANCE**

#### **Chapter I Constituents of cover**

#### **Section 1 General principles and definitions**

##### **1. Scope of the common principles**

a) The common principles shall apply to cover for supplier credit transactions with public or private buyers and to cover for buyer credit transactions with public or private borrowers.

b) The common principles shall apply to cover for all risks as defined in item 4. Nevertheless, the insurer may decide in each individual case to limit its cover to certain risks only.

c) When all the obligations of a private debtor are wholly and unconditionally guaranteed by an entity which is considered public in accordance with item 5, the common principles for public debtors shall apply.

When used in this Annex, the term "debtor" means either the buyer or borrower as referred to in item 1(a), or their guarantor with regard to the insured transaction.

##### **2. Characteristics of supplier credit**

a) The term "supplier credit" shall apply to a commercial contract providing for an export of goods and/or services originating in a Member State between one or more suppliers and one or more buyers, whereby the buyer undertakes to pay the supplier on cash terms or on credit terms.

b) Cover provisions for supplier credit shall apply where cover is given to enterprises established in a Member State in accordance with Article 48 of the Treaty establishing the European Community.

c) If a commercial contract is being financed by means of a buyer credit or any other financing arrangement, cover given to the exporter for the commercial contract itself shall follow the provisions for cover for supplier credits.

##### **3. Characteristics of buyer credit**

a) The term "buyer credit" shall apply to a loan agreement between one or more financial institutions and one or more borrowers financing a commercial contract providing for an export of goods and/or services originating in a Member State, whereby the lending institution(s) undertake

to pay the supplier(s) under the underlying transaction on cash terms on behalf of the buyer(s)/borrower(s), while the buyer(s)/borrower(s) will reimburse the lending institution(s) on credit terms.

b) Cover provisions for buyer credit shall apply where cover is given to financial institutions, irrespective of their place of establishment or registration, provided that the buyer credit constitutes an unconditional obligation of the borrower to repay its debt, irrespective of the performance of the commercial contract to be financed.

c) Cover provisions for buyer credit shall apply to cover given to a financial institution in respect of negotiable instruments properly held by that financial institution and payable by a buyer pursuant to any arrangement for the financing of a commercial contract.

#### 4. Definition of the risks involved

a) The commercial risk for private debtors is determined by items 14, 15 and 16.

b) The political risk for private debtors is determined by items 17 to 22, and for public debtors by items 15 to 22.

c) The manufacturing risk is determined by item 6(b).

d) The credit risk is determined by item 6(c).

#### 5. Status of the debtor

a) Any entity which, in whatever form, represents the public authority itself and which cannot, either judicially or administratively, be declared insolvent, shall be considered as a public debtor. This may either be a sovereign debtor, i.e. an entity which represents the full faith and credit of the State, e.g. the Ministry of Finance or the Central Bank, or any other subordinate public entity, such as regional, municipal or parastatal authorities or other public institutions.

b) When assessing the status of a debtor, the insurer shall take into account:

aa) the legal status of the debtor;

bb) the real effectiveness of any legal action against the debtor;

cc) the debtor's sources of finance and revenue, taking into account the fact that a public debtor may also discharge his debts by using sources which are not related to central government funds, for example through revenues raised by local taxation, or by providing public services;

dd) the degree of influence or control over the debtor that can be

exercised by the host country government.

c) Any debtor which is not public, according to the aforementioned criteria, shall be considered as private.

## Section 2 Scope of cover

### 6. Covered risks

a) The covered risks shall be the risk of loss arising from the manufacturing and the credit risk.

b) Loss arising from manufacturing risk materialises when the performance of the contractual obligations of the policyholder, or the manufacture of the goods ordered, has been suspended for a period of six consecutive months, provided that such suspension is caused directly and exclusively by the occurrence of one or more of the covered causes of loss listed as risk in items 14 to 22.

c) Loss arising from credit risk materialises when the policyholder has been unable to obtain payment of any amount due to it under the relevant commercial contract or loan agreement during a period of three months after the due date, provided that such non-payment is caused directly and exclusively by the occurrence of one or more of the covered causes of loss listed as risk in items 14 to 22.

d) Where the risk related to a buyer credit is guaranteed unconditionally the insurer shall follow the principles and procedures laid down in items 32, 33, and 47(a).

### 7. Extent of cover

a) Cover for manufacturing risk shall include, within the limit of the contract amount, the costs incurred by the policyholder either in performing its contractual obligations or in manufacturing the goods subject to the contract, provided that such costs are properly attributable to the performance of the contract.

Cover for the manufacturing risk shall not include:

aa) costs incurred in respect of goods and/or services for which cover of the credit risk has already taken effect;

bb) amounts paid by the policyholder following the calling of a bond issued in respect of the covered contract; however, this does not prevent the insurer from covering such risks outside the scope of this Annex, and

cc) amounts corresponding to penalties and damages paid by the policyholder to the debtor.

b) Cover for credit risk shall include the amount (principal and interest) owed by the buyer under the commercial contract or by the borrower under the loan agreement, including interest accruing after the due date (post-maturity interest).

Cover for credit risk shall exclude amounts corresponding to penalties and damages paid by the policyholder to the debtor.

#### 8. Percentage of cover

a) The percentage of cover and the basis for determining the maximum amount of the indemnity for which the insurer may be liable shall be expressly laid down in the credit insurance policy.

b) If an insurer gives a cover percentage higher than 95 %, it shall follow the principles and procedures laid down in items 32, 33 and 47(a).

#### 9. Uninsured percentage

Without prejudice to the provisions of item 8(b), the policyholder shall retain for its own account any uninsured percentage. The insurer may decide to allow the policyholder to wholly or partially lay off such uninsured percentage.

#### 10. Cover for transactions in foreign currency

If transactions provide for payment or financing in one or more foreign currencies, cover may be given in any such currency.

#### 11. Foreign supplies

Subcontracts with parties in one or more Member States are automatically included in the cover in accordance with Council Decision 82/854/EEC of 10 December 1982 on the rules applicable, in the fields of export guarantees and finance for export, to certain subcontracts with parties in other Member States or in non-member countries.

#### 12. Effective date of cover

a) In case of a buyer credit, cover shall take effect on the date of entry into force of the loan agreement, provided that the conditions precedent stipulated in the credit insurance policy and the loan agreement have been met.

b) In case of a supplier credit, cover of the manufacturing risk shall take effect on the date of entry into force of the commercial contract, provided that the conditions precedent stipulated in the credit insurance policy and the commercial contract have been met.

Cover of the credit risk shall take effect on the date on which full

completion of the contractual obligations of the policyholder entitles the latter to payment, provided that the conditions precedent stipulated in the credit insurance policy and the commercial contract have been met. However, cover of the credit risk may take effect on the date of each partial delivery or partial dispatch, provided that the policyholder, under the terms of the contract, is entitled to payment of a fixed and definitive amount corresponding to the value of the goods and/or services delivered or dispatched.

### Section 3 Causes of loss and exclusions of liability

#### 13. Liability of the insurer

The insurer shall be liable if the loss is directly and exclusively attributable to one or more of the covered causes of loss laid down in items 14 to 22.

#### 14. Insolvency

Insolvency of the private debtor and, if any, its guarantor, either de jure or de facto.

#### 15. Default

Default of the debtor and, if any, its guarantor.

#### 16. Arbitrary repudiation or refusal

Decision of the buyer under a supplier credit to interrupt or cancel the commercial contract, or to refuse to accept the goods and/or services, without being entitled to do so.

#### 17. Decision of a third country

Any measure or decision of the government of a country other than the country of the insurer, or the country of the policyholder, including measures and decisions of public authorities which are deemed to constitute government interventions, which prevents performance of the loan agreement or the commercial contract, respectively.

#### 18. Moratorium

General moratorium decreed either by the government of the country of the debtor, or by that of a third country through which payment in respect of the loan agreement or the commercial contract is to be effected.

#### 19. Prevention or delay in the transfer of funds

Political events, economic difficulties, or legislative or administrative measures which occur or are taken outside the country of the insurer, and which prevent or delay the transfer of funds paid in respect of

the loan agreement or the commercial contract.

#### 20. Legal provisions in the debtor's country

Legal provisions adopted in the country of the debtor declaring payments made by the debtor in local currency to be valid discharge of the debt, notwithstanding that, as a result of fluctuations in exchange rates, such payments, when converted into the currency of the commercial contract or of the loan agreement, no longer cover the amount of the debt at the date of transfer of funds.

#### 21. Decision of the country of the insurer or of the policyholder

Any measure or decision of the government of the country of the insurer or of the policyholder, including measures and decisions of the European Community, relating to trade between a Member State and third countries, such as a ban on exports, in so far as its effects are not covered otherwise by the government concerned

#### 22. Force majeure

Cases of force majeure occurring outside the country of the insurer, which could include war including civil war, revolution, riot, civil disturbance, cyclone, flood, earthquake, volcanic eruption, tidal wave, and nuclear accident, in so far as its effects are not insured otherwise.

#### 23. General exclusion from liability

The insurer should be entitled to decline liability for any loss that is directly or indirectly attributable to the following:

- a) any action or omission by the policyholder, or by any person acting on its behalf;
- b) any provision restricting the policyholder's rights, which is included in the loan agreement, the commercial contract, or any associated document including any document relating to the guarantee or security arrangements involved;
- c) any further agreement between the policyholder and the debtor after conclusion of the loan agreement or the commercial contract, which prevents or delays the payment of the debt;
- d) in the case of a supplier credit, any failure of subcontractors, co-contractors, or other suppliers to perform their obligations, provided that such failure is not a consequence of political events as described in causes of loss listed in items 17 to 22.

#### Section 4 Provisions for the indemnification of claims

#### 24. Claim waiting period

a) The claim waiting period shall correspond to the period of time set for the covered risk to materialise, as laid down in item 6(b) and (c).

b) No claim waiting period need apply:

aa) when, in the case of a private debtor, the non-payment is due to the debtor's insolvency, either de jure or de facto.

bb) in case of a bilateral intergovernmental debt restructuring agreement.

#### 25. Indemnification and assignment

a) The policyholder is entitled to indemnification at the end of the claim waiting period as defined in item 24, provided that the conditions precedent to the insurance and the indemnification have been fulfilled, the claim is legally valid, and the policyholder has managed the risk with due diligence.

b) The insurer is entitled to assignment of the policyholder's rights under, respectively, the loan agreement or the commercial contract.

#### 26. Secured obligations

If the debtor's obligations to the policyholder have been secured by means of a guarantee or other security, the policyholder must have taken all necessary measures as required in the policy to ensure that the guarantee or other security is valid and enforceable.

#### 27. Calculation of the claim

Without prejudice to the provisions of item 31, the insurer shall, in calculating the payment of a claim, not pay the policyholder an amount exceeding the actual amount of its total loss, and/or exceeding the amount which the policyholder was actually entitled to receive from the borrower under the loan agreement or from the buyer under the commercial contract, respectively.

#### 28. Payment of the claim

The claim shall be paid without delay, at the latest, however, within one month of the end of the claim waiting period, provided that the insurer has been notified promptly of the occurrence of the claim and received all necessary information, documents, and evidence in order to establish the validity of the claim in good time.

In the case of cover for manufacturing risk, the claim shall be paid within one month either of the end of the claim waiting period, or of the



date of receipt of an expert's report, where relevant, or of the date of agreement by the policyholder and the insurer on the amount of the claim, whichever is later.

#### 29. Disputes relating to the claim

If losses subject to an application for indemnification by the policyholder relate to rights which are in dispute, the insurer may defer the payment of the claim until the dispute is settled in favour of the policyholder by the court or arbitration body provided for in the loan agreement or the commercial contract, respectively.

#### 30. Bilateral intergovernmental debt restructuring agreement

a) If the covered loan agreement or commercial contract is subject to a bilateral intergovernmental debt restructuring agreement, the policyholder shall follow the conditions of the restructuring agreement in respect of both the insured and the uninsured portions of that loan agreement or commercial contract, respectively. Upon request by the insurer, the policyholder shall give any necessary assistance to the insurer for the performance of the restructuring agreement

b) If the insured amount is included in a bilateral intergovernmental debt restructuring agreement, the insurer may waive the one-month period provided for in item 28, once the bilateral agreement is effective.

#### 31. Additional costs

Additional costs resulting from action to minimise or avoid loss shall be covered proportionally to the percentage of cover under the credit insurance policy, provided that they have been approved by the insurer. Additional costs include costs of court action or other legal expenses to minimise or avoid loss but exclude costs of establishing the validity of a claim.

However, if such costs also relate to amounts or maturities not covered by the insurer, they shall be attributed proportionally to the insured and uninsured amounts or maturities.

### Chapter II Premium

#### 32. General principles for setting the premium

Premiums shall converge. To this end the premium charged for export credit insurance shall:

a) correspond to the risk (country, sovereign, public and/or private risk) covered;

- b) adequately reflect the scope and the quality of the cover granted;
- c) cover adequately long-term operating costs and losses.

### 33. Quality of cover

When determining the quality of cover as mentioned in item 32, the insurer shall duly take into account the percentage of cover, the conditionality of cover, and any other condition affecting the quality of cover.

### 34. Country risk assessment

The level of premium charged for each country or each country category shall be based on an appropriate country risk assessment.

### 35. Creditworthiness of the debtor

When setting premium rates, the insurer shall appropriately take the creditworthiness of the debtor including its status as set out in item 5 into account.

### 36. Risk period

When calculating the premium, the insurer shall take account of the total risk period as well as the repayment profile and interest.

### 37. Chargeable amount

a) Premium shall be paid on the chargeable amount and shall be based, as far as possible, on minimum premium benchmarks. The benchmarks shall be expressed in percentages of a reference value as if the premium were collected in full at the date of the insurance or guarantee; for credit risk this reference value shall at least be, respectively, the amount of the principal of the loan or the (re-)financed portion of the commercial contract, and for manufacturing risk the total contract value minus the downpayment.

b) In the case of manufacturing risk, the chargeable amount may be reduced to the expected maximum loss.

### 38. Payment of premium

a) The total premium amount shall be due on the date of the credit insurance policy or guarantee or when the contract or loan agreement becomes fully effective.

b) The premium may be paid in instalments or by adding a spread to the interest rate, provided that this corresponds, in net present value terms, to the premium amount referred to in item (a) above.

### 39. Determination of the country cover policy

a) The insurer shall, in the light of its size and the structural economic constraints, base its country cover policy on its assessment of the risk by country, its total outstanding exposure for each country, and the composition of its country risk portfolio.

b) In setting its country cover policy, the insurer shall take into account each debtor country's classification.

c) Nevertheless, the insurer shall be free to stop or limit insuring business for a particular country, regardless of the country classification

### 40. Definition of total outstanding exposure by country

The total outstanding exposure shall, within the limits of the percentage of cover, be determined on the basis of the amounts for medium and long-term business for export insurance of goods and/or services originating in EU Member States against medium and long-term risk.

### 41. Country risk

a) As regards the group of countries which constitute the best risk, the insurer shall, in principle, set no restrictions on its cover policy.

b) For other countries, the insurer may set restrictions on its cover policy.

c) An insurer which, in principle, does not offer cover for a country or a particular group of countries, may, however, exceptionally cover certain transactions for reasons of bilateral policy or national interest, or where sufficient freely convertible foreign exchange is available for the transaction in question.

d) Concerning the countries referred to in (b) above, insurers may set risk limits, in cumulative or alternative manner, for example:

- aa) the total outstanding exposure for that country;
- bb) the total value of offers of cover;
- cc) the value of new contracts to be covered;
- dd) the maximum amount covered per transaction.

Insurers may also increase the applicable premium.

Below the risk limits for a particular country, there shall in principle be no limit on country cover policy.

### 42. Specific conditions for country cover

The insurer may routinely apply to a particular country, irrespective of the corresponding country category, certain cover conditions such as:

- a) payment or transfer guarantee by the Central Bank or the Finance Ministry of the relevant country;
- b) irrevocable letter of credit or bank guarantee;
- c) extension of the claim waiting period;
- d) reduction in the cover percentage;
- e) restriction of the cover for certain sectors of activity or for certain types of projects.

#### Chapter IV Notification Procedures

##### 43. Scope of the notification procedures

- a) Insurers shall apply the following procedures to the common principles set out in Chapters I, II and III.
- b) These procedures shall supplement those established under Council Decision 73/391/EEC of 13 December 1973 on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits.

##### 44. Types of notification procedures

There shall be four types of notification procedures, destined to the European Commission and the other insurers:

- a) annual notification for information;
- b) notification for decision;
- c) ex-ante notification for information; and
- d) ex-post notification for information.

The data provided shall not be disclosed to third parties.

##### 45. Annual notification for information

- a) At the end of each year, at the latest however by 30 April of the following year, each insurer shall report to the other insurers and to the European Commission on its activity over the previous year on a retrospective basis. This report shall cover all debtor countries and shall contain, for each of these countries:

- aa) the total amount of cover the insurer has offered;
- bb) the total outstanding exposure as defined in item 40;
- cc) the premium earned;
- dd) the amount of recoveries made; and
- ee) the amount of claims paid.

- b) At the beginning of each year, at the latest by 31 January, each insurer shall report to the other insurers and to the European Commission on

its cover policy, including the type and level of ceilings as well as the conditions the insurer intends to routinely impose on cover, as envisaged or applicable for the year to come.

#### 46. Notification for decision

a) In case of competing offers from Community exporters or banks, an insurer involved shall respond promptly to any request for information from another insurer involved on the status of the debtor of the transaction in question - as defined in item 5.

b) In case of disagreement on the status of the debtor, the insurers involved shall make the information available to the other insurers in a bid to settle on a mutually agreed status.

c) If insurers cannot agree on the status of the debtor within 10 working days from the request for information, the insurers involved shall bring the matter with the relevant information to the attention of the European Commission, which shall take a decision.

#### 47. Ex-ante notification for information

a) An insurer which intends to derogate from the provisions of this Annex by giving more favourable cover conditions either for a particular transaction or a set of transactions, or for a certain sector or sectors, or for a certain country or countries, or for its overall system, shall notify the other insurers and the European Commission of its intention at least seven working days before its decision becomes effective, stating the reasons for the intended derogation, for example the need to match international competition, and the corresponding premium rate to be charged.

b) An insurer which intends to charge a lower premium than that set out in its annual notification in accordance with item 45(b), shall notify the other insurers and the European Commission of its intention at least seven working days before its decision becomes effective.

c) An insurer which, following another insurer's notification in accordance with (a) or (b) above, intends to give more favourable conditions than the initiating notifier, shall notify the other insurers and the European Commission of its intention at least seven working days before its decision becomes effective, stating the premium rate it intends to charge.

d) An insurer which, in accordance with item 41(c), intends to cover transactions with debtors in countries, for which it normally does not offer cover, shall notify the other insurers and the European Commission of its

intention at least seven working days before its decision becomes effective, stating the premium rate it intends to charge.

#### 48. Ex-post notification for information

a) An insurer which decides to derogate from the provisions of this Annex by giving less favourable cover conditions either for a particular transaction or a set of transactions, or for a certain sector or sectors, or for a certain country or countries, or for its overall system, should at the latest by 31 January notify the other insurers and the Commission accordingly for the preceding calendar year.

b) An insurer which decides to adjust one or more elements of its country cover policy set out in its annual notification in accordance with item 45(b), shall promptly notify the other insurers and the European Commission accordingly.

c) An insurer which, following a notification in accordance with items 47(a) and/or (b), decides to give the same conditions as the initiating notifier, shall promptly notify the other insurers and the European Commission accordingly.

d) Each insurer shall promptly give detailed replies to any request from other insurers or the European Commission for clarification or information on its activity.

#### 49. Use of an electronic mail system

All notifications shall normally be made via an electronic mail system, or, if necessary, by other appropriate means of instant written communication.